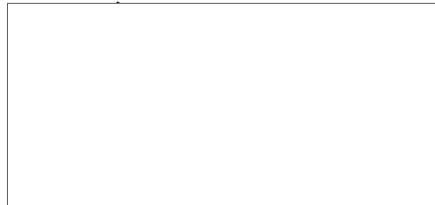


STATEMENT

OF



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for the

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION

Before the

SENATE SELECT COMMITTEE ON INTELLIGENCE

on

S 1324, the "Intelligence Information Act of 1983"

June 28, 1983

The American Newspaper Publishers Association is deeply concerned about the potential impact of S 1324, the "Intelligence Information Act of 1983."

My name is Charles Rowe and I am editor and co-publisher of The Free Lance-Star in Fredericksburg, Virginia. I am testifying today on behalf of ANPA, a non-profit trade association with nearly 1,400 member newspapers representing some 90 percent of the daily and Sunday circulation in the U.S. Many non-daily newspapers also are members.

Mr. Chairman, the bill being considered here today is the result of several years of discussion and debate about the need to provide some relief from the Freedom of Information Act for the Central Intelligence Agency. Throughout this debate, representatives of the newspaper business have not stubbornly rejected nor ignored the CIA's pleas for some relief. While we have stated repeatedly that the CIA never has been forced to turn over to the public any classified information (a fact that still holds true today), we have also listened carefully to the agency's claims that this court record belies the vast number of hours and amount of money that went into processing the denied requests that subsequently were upheld by the courts.

In fact, representatives of the newspaper business met in 1982 with CIA Director William Casey and other top CIA officials to attempt to learn more about the unique problems confronting the CIA in its efforts to comply with the FoIA. Mr. Chairman, this educational process has been a good faith effort to understand. And, while we believe the language of S 1324 is an improvement over previous bills, (such as

S 1273, the "Intelligence Reform Act of 1981," introduced by Senator Chafee in the 97th Congress) we still have serious concerns about the practical effects the passage of S 1324 might have on the public's access to information about the CIA.

S 1324 would allow the Director of the CIA to withhold specific operational files from the search and review requirements of the FoIA. This power would extend only to those operational files located within the offices of the Directorate of Operations, the Directorate for Science and Technology and the Office of Security of the CIA.

You must realize, Mr. Chairman, that we are relying wholly on the expertise and judgment of this committee and representatives of the CIA, regarding the extensiveness of the power being given to the CIA Director by S 1324. We do not know (nor should we) the percentage of CIA files affected by this bill; we have no knowledge of the ease with which information could be placed in an operational file thereby exempting it from search and review; nor do we have knowledge of the ease with which files could be designated "operational" and be sealed off forever from any public access.

In carefully studying the language of S 1324, it would appear that this power is broad. For example, any operational files in the three specific offices, dealing with "foreign intelligence, counterintelligence, or counterterrorism operations" would disappear from existence so far as the public or the courts are concerned. The only oversight of the Director's actions would be by this committee and the House Intelligence Committee. While Congressional oversight can be effective, it is only as effective as the amount of information that Congress receives from the CIA.

JUDICIAL REVIEW

Of primary concern is the elimination of judicial review of the Director's decision to designate a file as operational. CIA Deputy General Counsel Ernest Mayerfeld told this committee last week that S 1324 leaves "full discretion to the Director. Any other interpretation would turn this legislation on its head."

As Senator Huddleston pointed out last week at the same hearing, a "major principle of the FoIA is that the courts have the right of review."

ANPA agrees that this is a major and vital principle of the Act. De novo review of CIA decisions under FoIA was made part of the law with the 1974 amendments. This judicial authority put teeth into the law and helped make it an effective tool for the public to try to seek information about CIA functions. As then Deputy Director Admiral Bobby Inman told this committee in 1981 "the Central Intelligence Agency had received virtually no FoIA requests," prior to the 1974 amendments. The amendments establishing de novo review and requiring release of reasonably segregable portions of a document "led to an explosion in FoIA requests" at the CIA, according to Inman. To strip the law of this principle of de novo review, and of any judicial review whatsoever, is to return us to pre-FoIA days. It would also return us to the days where the ineffectiveness of the Act rendered it basically useless to the public -- a uselessness reflected by the absence of requests noted by Admiral Inman. ANPA cannot support this step backward.

APPLICABILITY

ANPA believes it vital that the application of S 1324 be restricted to the CIA. It would appear that the language of the bill, based on the specificity of the offices and files mentioned, covers only the CIA.

Additionally, it has been emphasized by CIA officials that the language can only apply to the CIA because of the unique, compartmentalized structure of its files. Our concern is based on repeated testimony in the past by representatives of the Defense Intelligence Agency, the National Security Agency and other non-intelligence agencies, urging relief from FoIA. An identical "neither confirm nor deny" approach of S 1324 has been sought in the past by these other agencies. There must be an affirmative statement in the bill or in the legislative history about the exclusive application to the CIA of S 1324.

BACKLOG OF REQUESTS

A primary problem journalists have had in requesting information from the CIA are the excessive delays in processing. Proponents of S 1324 claim one of the benefits of passage would be a reduction in the existing backlog of requests. When questioned last week on the specific steps that would be taken by the CIA to clear up this backlog, the response was troublingly vague. We would be very interested in the specific, definitive steps the CIA will take, if S 1324 is passed, in answering those requests for information not contained in operational files.

For example, the CIA administratively could determine to confer with requesters by telephone to clarify the request that has been made, thereby eliminating any confusion and speeding the processing time.

The other serious backlog is with CIA lawsuits pending in court. Mr. Mayerfeld testified last week that of the 77 suits before the court, 46 would be affected by S 1324. Of these, 22 should be dismissed entirely because they deal only with documents from operational files; and, the remaining 24 would largely be dismissed because the majority of documents under question are from designated files. Specific details about the

nature of the information involved in these lawsuits could be beneficial to members of this committee in understanding the type of information that would be affected by the passage of S 1324.

AGENCY ABUSE

ANPA believes it vital that any information on alleged abuses by the CIA continue to be subject to the search and review provisions of the current Act. CIA officials last week gave oral assurances that records of any internal investigations of non-frivolous allegations would remain in non-designated files.

As John McMahon, deputy director of the CIA stated last week, "Information relevant to the subject matter of the investigation would be subject to search and review in response to an FOIA request because this information would be contained in files belonging to the Inspector General's office, for example, and these files cannot be designated under the terms of this bill."

While these oral statements are reassuring, it is critical that legislative history on this point be crystal clear. Further, there should also be clarification of what is and is not "frivolous."

CONCLUSION

In conclusion, Mr. Chairman, we would like to assure you that no representative of the newspaper business wants to in any way endanger the national security of our nation or endanger the lives of those people involved in maintaining that security. We are here today because of the serious public policy questions inherent in S 1324. We are at something of a disadvantage because it is a public policy discussion that must take place without the complete airing of information on both sides. We must trust the veracity of the statements by CIA officials that passage of S 1324 would not result in additional information being withheld by

the CIA, but would free-up the agency from the search and review of information that is currently exempted from release. We also must and will rely on the wisdom and diligence of the Congressional oversight process -- as do all citizens.

We must also raise our heartfelt concern that this committee take into account the vital role that public access has played in the growth and maturation of this country. We believe further refinement of S 1324 is necessary to ensure that the immense power that would be invested in the director of the CIA with the passage of this bill does not upset the delicate balance of the government's need for secrecy, the public's right to know and an individual's right to privacy.

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